

WISCONSIN SUPREME COURT CALENDAR
February 28, 2001
10:45 a.m.

99-3263

Julie L. Rabideau v. City of Racine

This is a review of a decision from the Wisconsin Court of Appeals, District II (headquartered in Waukesha), which affirmed a judgment of the Racine County Circuit Court, Judge Allan B. Torhorst presiding.

In this case, the Wisconsin Supreme Court will decide whether a woman can sue the City of Racine for negligent infliction of emotional distress or for property loss because a police officer shot her dog.

The undisputed facts are that Julie L. Rabideau and City of Racine Police Officer Thomas Jacobi lived across the street from one another and were not well acquainted. On March 31, 1999, Rabideau saw Jacobi shoot her dog. When she was told two days later that the dog had died, she collapsed and sought medical treatment.

Other facts are disputed. The City of Racine's story, based on what Jacobi has said, is that Jacobi and his wife and child arrived at their home, Rabideau's dog ran across the street and attacked Jacobi's dog on Jacobi's property, Jacobi feared for the safety of his dog and his family and fired two shots at Rabideau's dog, missing both times. Rabideau's dog then began to retreat but turned around snarling and, fearing that the dog was getting ready to attack, Jacobi shot and killed it.

Rabideau's story is that her dog never attacked Jacobi's dog but rather was sniffing the dog while the two animals were on the grass between the sidewalk and curb in front of Jacobi's house. She says she called to her dog and approached to retrieve the animal when Jacobi shot at the dog and missed. She says he then shot again and hit the dog and, as the animal tried to crawl away, he shot a third time and missed. She claims that her dog never acted aggressively in any way towards Jacobi's dog.

Rabideau sued the City of Racine requesting \$4,999 in damages. The trial court dismissed the case, found that Rabideau's claims were frivolous, and assessed against Rabideau's lawyer the costs that the city incurred defending itself.

Rabideau appealed, and the Court of Appeals affirmed, noting that Rabideau's claim for negligent infliction of emotional distress failed because (1) the dog was not related to Rabideau, and (2) the dog was property and recovery for emotional distress over a property loss is unlikely. The Court of Appeals further found that Rabideau had neither proved that Jacobi's conduct was extreme and outrageous, nor shown that she had suffered an extreme disabling emotional response. A person seeking to recover for intentional infliction of emotional distress must establish these factors. The Court of Appeals did find that that Jacobi's action was "unreasonable" but determined that there was no evidence that Jacobi intended to kill the dog as a means of harming Rabideau. The Court of Appeals also affirmed the finding that Rabideau's lawsuit was frivolous.

This appeal presents the question of whether the Supreme Court should abandon existing law that holds that animals are property, and instead give family pets a measure of "personhood." This case also raises the issue of whether a relationship between an owner and his/her pet should be considered kinship so as to justify recovery of damages for infliction of emotional distress.